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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,180	11/14/2005	Roland Kebel	TRAUMA 3.3-437	6181
530 7590 09/29/2008 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090				
EXAMINER				
GETTMAN, CHRISTINA DANIELLE				
ART UNIT		PAPER NUMBER		
3734				
MAIL DATE		DELIVERY MODE		
09/29/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/532,180

**Applicant(s)**

KEBEL ET AL.

**Examiner**

CHRISTINA D. GETTMAN

**Art Unit**

3734

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
- Paper No(s)/Mail Date 04/21/2005
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Objections***

Claim 12 is objected to because of the following informalities:

In line 2, change [mounted pivotally with] to --pivotally mounted to--.

In line 3, change [is mounted a] to --is pivotally mounted to--.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 recites the limitation "the jaws" in line 5. There is insufficient antecedent basis for this limitation in the claim.

Claims 16 and 17 recite the limitation "the finger hole portion" in line 4 of claim 16 and lines 3 and 5 of claim 17. There is insufficient antecedent basis for this limitation in the claim.

Claim 16 recites the limitation "the jaws portion" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claims 17, 20 and 22 recite the limitation "the complementary catching element" in line 4 of claim 17, line 2 of claim 20, and line 1-2 of claim 22. There is insufficient antecedent basis for this limitation in the claim.

Claim 19 recites the limitation "the two side walls" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 21 recites the limitation "the spring" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 23 recites the limitation "said locking element opening" in line 9. There is insufficient antecedent basis for this limitation in the claim.

Claim 23 recites the limitation "said second locked position" in line 12. There is insufficient antecedent basis for this limitation in the claim.

Claims 17 and 21 recite "said first catching element is a rod mounted pivotally on the second handle" in lines 1-2 of claim 17 and lines 1-2 of claim 21. Since claim 1 recites that the first catching element is mounted pivotally with the first handle, the Examiner is taking the limitation of claims 17 and 21 to mean that the second catching element is a rod, not the first catching element.

Claims 12 and 16 are further deemed indefinite because a broad range or limitation followed by linking terms (e.g., preferably, maybe, for instance, especially) and a narrow range or limitation within the broad range or limitation is considered indefinite since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired.

Claim 12, line 8, recites "a lever end," however, it is unclear what element of the claimed invention it is an "end" of.

Claim 16 is indefinite because it is unclear how there is a second mounting point when a first mounting point has not been established.

As a result of independent claims 12 and 23 being rejected under 112, aside from the other 112 rejects of other claims, all of their dependent claims are further rejected under 112.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12, 13, and 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Saila (U.S. Patent No. 4,538,485). Saila discloses the invention as claimed including forceps that have two handles (ref. 24), a first catching element (ref. 48) mounted pivotally (ref. 52) on a first handle, a second catching element (ref. 28) mounted on a second handle, the catching elements assuming only two stable settings (one locked setting and one unlocked setting), a spring means (ref. 54) with the first handle biased between a first and second mounting point, a lever (ref. 44) connected with the first catching element to engage the spring means, the activation element (ref. 43) being pivotable (about ref. 8), the second mounting point being the point of engagement of the lever end (see ref. 54 and its points of contact), the catching elements and complimentary catching elements being curved (see Fig. 3), one of the catching elements having a changing radius (first catching element), the second catching element being a rod (see ref. 28) having grooves (see ref. 32), and the complementary catching element being part of the activation element (ref. 43). The

previous elements mentioned can be considered as two members having a clamping portion (ref. 14) and a gripping portion (ref. 22), the two members pivotally connected to one another (ref. 18), a locking element (ref. 48) that moves between a locked and unlocked position, an actuator mounted on the gripping portion (ref. 44), part of the gripping portion (ref. 43) being pivotally coupled to the clamping portion by ref. 52), and the actuator having a finger engaging portion (top of ref. 44).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14-18 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saila. Saila discloses the invention substantially as claimed including a spring being mounted between abutting side walls within the first handle (see Fig. 3 between the two sides of ref. 26), the first handle having two portions hinged together at a pivoting point (ref. 52), the pivoting point being the second mounting point of the spring see left side of ref. 54 and it's connection to ref. 52), the rod extending through an opening (between ref. 59 and 48), the grooves of the rod engaging with a nose (ref. 48), and the rod being pre-biased by a spring (ref. 36). The elements mentioned above can be considered as two members having a clamping portion (ref. 14) and a gripping portion (ref. 22), the two members pivotally connected to one another (ref. 18), a locking element (ref. 48) that moves between a locked and unlocked position, an actuator

mounted on the gripping portion (ref. 44), part of the gripping portion (ref. 43) being pivotally coupled to the clamping portion by ref. 52), and the actuator having a finger engaging portion (top of ref. 44).

Saila does not disclose the spring means being a leaf spring or that the spring biases the rod towards the jaws. It would have been obvious to changed the coiled spring of Saila with a leaf spring since the leaf spring would still have biased the nose into engagement with the rod grooves. It would have also been obvious to one having ordinary skill in the art to have placed the spring (ref. 36) on the other side of ref. 28 so that the rod was biased towards the jaws and, therefore, towards the nose. With regards to claims 16, 17, and 24, Saila also does not disclose a fingerhole portion. It is well-known in the art to provide fingerhole portions on forceps in order to allow the user to better grip a handle portion. Therefore, it would have been obvious to have added a finger hole portion to the lever end of Saila in order to better allow the surgeon to grasp the actuator in order to move it between its two positions.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTINA D. GETTMAN whose telephone number is (571)272-3128. The examiner can normally be reached on Monday-Thursday 6:45 am to 3:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christina D Gettman/  
Examiner, Art Unit 3734  
571-272-3128

/Todd E Manahan/  
Supervisory Patent Examiner, Art Unit 3731